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February 10, 1998

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Ms. Magalie R. Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Re: WT Docket No. 96-86;
Meeting Federal, State and Local Public Safety Agency
Communication Requirements Through the Year 2010;
Ex Parte Meetings

Dear Ms. Salas:

The purpose of this letter is to provide notice that Alan Caldwell of the International Association of Fire Chiefs, Inc. ("IAFC"), Richard DeMello of the Forestry Conservation Communications Association ("FCCA"), Al Mello of the International Municipal Signal Association ("IMSA"), Larry Miller of the American Association of State Highway and Transportation Officials ("AASHTO") and Martin W. Bercovici and Nicole Donath of Keller and Heckman LLP (counsel for the aforementioned public safety entities) met with the following individuals on the indicated dates to discuss the above-captioned proceeding and other issues impacting public safety communications:

- Daniel Phythyon, D'wana R. Terry, John Clark, Kathryn Hosford and Steve Weingarten of the Wireless Telecommunications Bureau (February 9, 1998);
- Commissioner Susan Ness and David R. Siddall (February 9, 1998);
- Commissioner Harold Furchtgott-Roth and Paul Misener (February 10, 1998);
- Ari Fitzgerald of the Office of Chairman William E. Kennard (February 10, 1998);

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- Peter A. Tenhula of the Office of Commissioner Michael K. Powell (February 10, 1998); and
- Karen Gulick of the Office of Commissioner Gloria Tristani (February 10, 1998).^{1/}

The discussion primarily concerned the implementation of the new 24 MHz public safety spectrum allocation from the 746-806 MHz band (presently TV channels 60-69). As the foregoing public safety organizations explained in their Joint Comments and Reply Comments to the Commission in the above-referenced matter, they support the following three-tiered approach to the implementation of the new public safety allocation: (1) the development of a strong national plan; (2) reliance upon state, rather than regional, planning committees to address state, local and regional needs; and (3) the use of competitive coordination procedures. Set forth below is a summary of the positions expressed by these organizations (hereinafter referred to as "Joint Commenters") during the above-noted meetings.

With respect to the first tier -- *i.e.*, national planning -- the Joint Commenters advocate that an existing organization such as the National Public Safety Telecommunications Council ("NPSTC") or the Public Safety Communications Council ("PSCC") be tasked with the responsibility of developing the national plan and presenting it to the Commission for approval. The members of these groups have extensive experience with public safety spectrum planning and are most familiar with the complex issues involved. If the Commission were instead to require that the national plan be created by a new Federal Advisory Committee, this Committee likely would be comprised of primarily the same individuals that currently serve on NPSTC and the PSCC. However, the time-consuming task of forming the Committee and the necessity for complying with various federal requirements would unduly prolong the national planning process. At the same time, there would be no particular benefit to the creation of such a Committee, as an existing planning group such as NPSTC or the PSCC would be equally accountable to the Commission and the public, in the same fashion that an Advisory Committee recommendation is subject to public comment and Commission approval.^{2/} Additionally, if NPSTC or the PSCC were designated as the national planning body, participation would be invited from individual state and local public safety spectrum user agencies, as well as the existing members (primarily frequency coordinators and federal entities). To meet the time constraints imposed by Congress

^{1/} Mr. Bercovici was unable to attend the meeting with Mr. Tenhula, and Messrs. Bercovici and Caldwell were unable to attend the meeting and Ms. Gulick.

^{2/} Under the Noerr-Pennington Doctrine, participants in private groups advocating government action are entitled to Constitutional protections under the First Amendment. See Eastern Railroad Presidents Conference v. Noerr Motor Freight, 365 U.S. 127 (1961); United Mine Workers v. Pennington, 381 U.S. 657 (1965).

in recognition of the importance of this new spectrum allocation to the public safety community, the Joint Commenters believe that the Commission should select the national planning body as soon as possible, provide it with general guidance as to the elements that should be included in the national plan, and impose a reasonable but firm deadline for completion of the requisite tasks (e.g., 90-120 days).

To implement the national plan at the state, local and regional levels, the Joint Commenters urge the adoption of a state planning approach. Specifically, each state governor should be responsible for designating the appropriate state and local agencies to be represented on that state's committee. Because federal entities often work in conjunction with state and local agencies on matters relating to spectrum use, federal interests and input would be reflected in this process as well. In major metropolitan areas encompassing more than one state, the relevant state committees could coordinate their activities in determining frequency assignments in the same fashion as such areas frequently cooperate with respect to transportation, emergency response and other cross-border activities. The principal advantage of state planning over the regional planning approach that has been utilized in connection with the existing public safety allocation in the 800 MHz band would be the existence of accountability, deriving from the fact that the planning process would be part of the official duties of the highest level of government below the national level. The Joint Commenters and a number of other parties described in their Comments the inequities that have resulted from regional planning, largely due to the politicization of the process, a lack of representation on regional planning committees by all public safety services and agencies and the absence of a practical and effective mechanism for challenging the decisions of the regional planners. The use of state, rather than regional, planning committees would place all states on an equal footing, while eliminating the need for an outside source of funding for the planning process.

Finally, the Joint Commenters recommend that the Commission endorse competitive coordination procedures, modeled on those adopted in the Commission's spectrum "refarming" proceeding. This means that any of the certified public safety coordinators should be permitted to provide coordination for the new public safety channels. The availability of such a choice among coordinators would promote the Commission's basic policies favoring competition and would be consistent with the procurement procedures governing state and local governments. Indeed, public safety agencies can only benefit from the lower coordination costs and better service that would result. As with the competitive coordination presently in place for frequencies below 512 MHz, the recognized coordinators would be required to post and exchange information "real time" so that all coordinators on the network have access to the most current data.

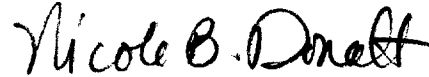
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Ms. Magalie R. Salas
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In accordance with the Commission's rules, an original and one copy of this letter have been submitted to the Secretary's office. Should the Commission require further information, it is respectfully requested to contact the undersigned.

Very truly yours,



Martin W. Bercovici
Nicole B. Donath

cc: Chairman William E. Kennard/Mr. Ari Fitzgerald
Commissioner Susan Ness/Mr. David R. Siddall
Commissioner Harold Furchtgott-Roth/Mr. Paul Misener
Commissioner Michael Powell/Mr. Peter A. Tenhula
Commissioner Gloria Tristani/Ms. Karen Gulick
Daniel Phythyon, Chief, Wireless Telecommunications Bureau
D'wana Terry, Acting Chief, Public Safety & Private Wireless Division,
Wireless Telecommunications Bureau
Mr. John Clark, Wireless Telecommunications Bureau
Ms. Kathryn Hosford, Wireless Telecommunications Bureau
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